

THE FINANCIAL SERVICES ROUNDTABLE



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July 23, 2004

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
FDIC
550 17th Street, NW
Washington, DC 20429
RIN 1550-AB87

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: No. 2004-26

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RICHARD M. WHITING
EXECUTIVE DIRECTOR AND
GENERAL COUNSEL

Office of the Comptroller of
Currency
250 E Street, SW, Mail Stop 1-5
Washington, DC 20219
Attention: Docket No. 04-13

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1199

Re: Proper Disposal of Consumer Report Information under the Fair and Accurate
Credit Transactions Act of 2003 (69 FR 31913 (June 8, 2004))

Dear Sir or Madam:

The Financial Services Roundtable¹ (the "Roundtable") appreciates the opportunity to provide comments to the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, the "Agencies") on proposed rule relating to the proper disposal of consumer reporting information under the Fair and Accurate Credit Transactions Act of 2003 ("FACTA").

I. Background

Section 216 of FACTA requires the Federal Trade Commission ("FTC"), the National Credit Union Administration ("NCUA"), the Securities and Exchange Commission ("SEC") and the Agencies to adopt comparable and consistent rules in relation to the disposal of sensitive consumer report information and records in order to

¹ The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Roundtable member companies provide fuel for America's economic engine accounting directly for \$18.3 trillion in managed assets, \$678 billion in revenue, and 2.1 million jobs.

prevent unauthorized disclosure of this information and to reduce the risk of consumer fraud.

This rule amends guidelines on information security previously implemented in Section 501(b) of Gramm Leach-Bliley (“GLBA”). The Agencies have proposed expanding the scope of the GLBA information security program requirements to include coverage to a broader set of information relating to information derived directly or indirectly through consumer reports regardless of whether the individual is a “consumer” or “customer.”

The Agencies’ proposed rule would require institutions to incorporate the disposal of consumer report information into their information security programs. The rule applies to any person who maintains or possesses “consumer information,” which is defined as any record about an individual, whether in paper, or electronic form, that is a consumer report or is derived from a consumer report. Generally speaking, possessors of consumer information must take reasonable measures to protect against unauthorized access or use of the information.

Roundtable member companies are committed to protecting the confidentiality of consumers’ financial information. The Roundtable supports the proposed rule to the extent it gives institutions flexibility to adopt programs to handle and properly dispose of consumer information; however, we offer the following recommendations on how the proposed rule may be improved.

II. The Definition of Consumer Information

The proposed rule would define “consumer information” as “any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of [financial institutions] for a business purpose. In the Supplementary Information, the agencies explain that the term “consumer information” would “cover all of the information about a consumer that is taken from a consumer report, including information that results in whole or in part from manipulation of information from a consumer report or information from a consumer report that has been combined with other types of information.”² The Supplemental Information also provides several illustrative examples of “consumer information” that include information an institution obtains about “an individual who guarantees a loan for a business entity” and “in connection with a loan to the individual’s sole proprietorship.”

The Roundtable is concerned that the proposed definition of consumer information may include business information not covered by the FCRA. Such a broad definition could expose institutions to legal risks when handling consumer reports relating to business transactions. The definition of a consumer report in the statute is limited to

² 69 Fed. Reg. 31915 (June 8, 2004).

information to be used in consideration of the establishment of eligibility for “credit or insurance to be used primarily for personal, family, or household purposes.” The Roundtable recommends that the Agencies remove references to business-related transactions to be consistent with this definition and with the definition of consumer under GLBA privacy regulations.

The Roundtable also is concerned that the proposed definition of "consumer information" does not provide guidance as to the coverage of information that does not identify a particular consumer. Although the Supplementary Information states that information derived from a consumer report that does not identify any particular consumer is not subject to the disposal rule, we believe that this exclusion should be explicitly stated in the rule itself in order to eliminate any uncertainty as to whether such information must be monitored by consumer report users for disposal purposes. We strongly recommend an express statement in the final rule indicating that information not identifying a particular consumer does not qualify as "consumer information". This would promote clarity and eliminate any ambiguity surrounding the phrase "any record about an individual." We believe that information that does not identify a particular consumer poses little or no risk of consumer fraud or identity theft.

Similarly, under this proposed definition, it appears that non-sensitive information such as names and addresses of consumers derived from consumer reports could be considered consumer information. We do not believe this broad scope was intended; we believe it goes beyond previous interpretations of FCRA which exclude from the definition of “consumer report” contact information (*e.g.*, name, address, phone numbers, etc.) with no further classification of the consumers. We believe that the proposed rule should be modified to explicitly state that "consumer information" includes information related to a individual’s specific financial characteristics (*e.g.*, eligibility for credit, bank account numbers, employment history, insurance) or personal characteristics (*e.g.*, driver's license information, social security number), and not general public record information such as names and addresses. We believe that the only information that needs protection is that which would be harmful to the consumer if it fell into the wrong hands.

III. Proper Disposal of Consumer Information

The proposed rule requires any person who maintains consumer information for a business purpose to dispose of such information properly by taking “appropriate measures” to protect against unauthorized access to or use of the information in connection with its disposal.

The Roundtable supports the flexible standard allowing institutions to create programs based on their business models and the sensitivity of the consumer information in their possession. We also support the determination that "consumer information" should be disposed of in a manner consistent with the disposal of "customer information".

This allows financial institutions to apply consistent disposal procedures and, therefore, a consistent level of protection for all consumer information nationwide.

IV. Effective Date Should Be Extended

The proposed rule indicates that the final rule will become effective ninety days after it is published in the *Federal Register*. Institutions are allowed an additional nine months (one year after final issuance) to incorporate consumer information disposal requirements into service provider agreements.

We believe that ninety days is an insufficient amount of time to implement a compliant disposal program. Many financial Institutions will have to adopt appropriate policies and procedures and assign personnel to oversee compliance. In addition, the one-year effective date to address service provider agreement issues would be difficult to comply with as institutions would have to amend and re-negotiate agreements.

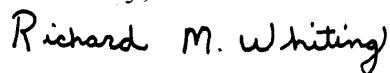
The Roundtable recommends that the Agencies use an implementation schedule similar to the GLBA information security program requirements that this proposal would amend. The GLBA information security program final rule provided institutions with effectively a six-month implementation period and a two-year grandfathering provision for service provider agreements to allow institutions ample time to amend existing contracts and allow contracts to expire.

V. Conclusion

The Roundtable supports the Agencies' efforts to protect consumer information, and recommend some improvements. We support the flexibility given to financial institutions under the proposal which allows them to create their programs that safeguard consumer information. We recommend that the Agencies' reexamine the definition of "consumer information" to ensure that the disposal requirements only apply to sensitive consumer information and do not include handling consumer reports relating to business related transactions. In addition, we respectfully request that the Agencies extend the effective date to 180 days so as to allow institutions adequate time to establish policies and procedures that comply with the final rule.

If you have any further questions or comments on this matter, please do not hesitate to contact me or John Beccia at (202) 289-4322.

Sincerely,



Richard M. Whiting
Executive Director and General Counsel